EXHIBIT O
TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WASHINGTON

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DEBORAH BOLLINGER and BRYAN :
BUBNICK, individually and on behalf:
of all others similarly :
situated, :
Plaintiffs, :
v. : Case No.:
RESIDENTIAL CAPITAL, LLC and : C10-1123 (RSM)
ALLY FINANCIAL, INC., :
Defendants. :

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Deposition of RESIDENTIAL CAPITAL, LLC
by and through its corporate designee
EDWARD MUSCOVITCH
Fort Washington, Pennsylvania
Thursday, November 10, 2011
12:36 a.m.

Job No.: 22-207404
Pages 1 - 95
Reported by: Darlene S. Traficante, RPR, CSR, CMRS

00015

BY MR. SCHUG:

Q So just describe for me generally what the job duties of a mortgage underwriter are.

A In general terms?

Q Yes.

A In general terms, the underwriter is responsible to confirm that the mortgage application that we have meets our own company guidelines as well as the secondary market guidelines.

Q Okay.

And we'll get into those guidelines a little bit later.

I talked to a previous witness about different areas that underwriters work in within their business unit, which I believe was the business lending unit. And she identified underwriters that worked in correspondent lending, underwriters that worked in wholesale lending and underwriters that worked in retail lending.

Does that cover the different areas that underwriters would work within that unit?

A It does, and from 2007 through 2010. I was responsible for the business lending underwriters.

Q Okay.

And that includes correspondent, wholesale

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Q Okay.

A So our team receives the loan at that point from the correspondent client. We have a workflow system that the loan gets entered into. That workflow system has changed over time. But the part of the workflow system will determine the oldest loan in the pipeline for the next person to work on. They'll retrieve that loan from the pipeline workflow tool that we have.

And they'll start to review the loan to confirm that the loan meets our program guidelines. And they'll use a number of different resources to make that determination.

They'll look at various aspects of the file between credit history, between income and the documentation used to support it, between assets and the documentation used to support it. The overall valuation from the actual appraisal is reviewed and how that value was obtained. And they'll review system edits that are also in place to review the overall loan program parameters.

Q Okay.

A They'll make their decision. If there is information missing from the file they'll request that information. If they determine a loan does not meet

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guidelines they'll turn that loan request down.

After all missing documentation would be obtained and signed off by the actual underwriter, the loan would be, quote, clear to close, and then our, our actual correspondent client will close that loan. Use their own warehouse funds to fund that loan, and then submit the loan back to GMAC for purchase.

Q Okay.

And as far as that general process, what are the differences between what you just described to me and how it would work in the wholesale or retail context?

A In the retail context, instead of that, that actual correspondent client taking the application, one of our own LOs, or -- one of our loan agents will take the application, so that person works for, for our firm. And we have our own processing unit. And the processing unit will process the file. They'll obtain all the documents from the bar. The underwriting piece will be the same as how the loan, how the loan application is taken, how it's processed, but then once it's sent into our team the same things apply from an underwriting standpoint.

Q Okay.

And then from an underwriting standpoint is

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it the same then for retail? Or was that retail?

A That was retail.

Q Okay, for wholesale?

A Wholesale, the underwriting, the art of the underwrite would be the same.

Q Okay.

A Using the, the same process steps and requirements.

Q Okay.

In the retail context once the underwriting piece is done, how is that different from what you described in correspondent?

A Once the loan would be clear to close, our closing department then prepares the closing papers and schedules that loan for closing. Our own funds, of course, would be used to fund that transaction. So there is no using like a warehouse line. And there is, there is no submitting the file back to us for purchase, it's using GMAC funds from the retail perspective.

Q Okay.

And then from the wholesale perspective, once the loan is cleared to close, what's the difference there?

A I can't speak to the actual processes as to

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Q Okay.

Can you give me, I just want to make sure that I understand what the exceptions refer to.

Can you give me a few more examples of what a typical exception situation might be?

A Fannie Mae purchases loans with a mortgage balance of a maximum in 2009 of $417,000. If we had a request for a $420,000 loan we could not do that loan. We're not able to sell that loan to Fannie Mae. They only purchase loans up to 417. So if we wanted to do that loan, and we had a $420,000 loan amount, that would be a case where we would need to have at that point an actual exception. And they're not able, from the underwriters' standpoint, able to do that.

Q Okay.

You mentioned the exception desk. What is that?

A Excuse me?

Q What's the exception, you mentioned the exception desk?

A Credit policy from an overall mortgage firm perspective, it's a department within the mortgage risk area. They maintain the overall ability to approve exceptions that are not conforming to what we had published from a loan, from an overall loan

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program standpoint.

And when I talk about exceptions in loan programs, I'm talking about the general loan, loan requirements, like maximum loan amount, maximum loan to value. Those are the, that's the exception ability that would be limited.

Q Okay.

Are there underwriters that work in the, at the exception desk?

A No, there are not.

Q Okay.

Who is the employee that decides whether, at the exception desk, whether an exception can be made?

A From the standpoint for this matrix, I was delegated certain exceptions that I am able to make. There is an overall range of exceptions that I can do. And then there is exceptions that do need to go to the credit policy team. And in overall consultation with the bank risk area, they'll determine if those exceptions can be made.

Q Okay.

A On this chart that would be level VII.

Q Okay.

And is level VII, credit risk management, managing director, is that even considered an

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proceedings.)

BY MR. SCHUG:

Q Okay.

Before we took a break we were talking a little bit about the guidelines that underwriters use to underwrite a loan.

And I kind of want to go at it in a different way. I'm not going to mark this as an exhibit but I'll just identify it for the record. It's a job description that's Bates labeled DB-508. And I just want you look on that where it says purpose, and it says, at the direction of the branch underwriterring supervisor/manager performs loan file review and underwriterring to determine compliance with company guidelines, underwriting philosophy, policy and procedures; do you see that?

A Yes, I do.

Q Okay.

Is there a difference between guidelines, philosophy, policy and procedures?

A Yes.

Q Okay.

Let's just start broadly with what is a guideline?

A The guidelines would be referenced in our

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client guide. There are some guidelines that are also included on that product summary that you had referenced, Exhibit 23.

Q Okay.

And between the client guide and the product summary, or other than the client guide and the product summary, what else would be considered a guideline?

A The requirements as listed on the AUS feedback report, the Desktop Underwriter report or on Prospector, that report will have additional, may have additional requirements on it.

Q Okay.

And what is underwriting philosophy?

A The overall philosophy is, is really the overall client guide. But how we determine income, how we determine assets. How we look at the valuation from the overall appraisal standpoint. So it's the how.

Q So the guideline is the what, the philosophy is the how?

A Um-hum, is the how.

Q And where is underwriting philosophy contained?

A The philosophy is generally contained in the

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Q Okay.

What is credit policy? Just generally?

A Credit policy is a department from the overall risk -- well, from the risk department at the mortgage firm. They're responsible for updating these client guides. And they would be responsible for communication with the agency, with Fannie Mae, with Freddie Mac or with any other investor.

Q Who is the head of credit policy?

A Today?

Q Yes.

A Katherine Eckerd.

Q And who is the head of it between 2007 and 2010?

A It changed during that time, there would be someone different between that timeframe.

Q Okay.

And what are credit overlays?

A Credit overlays are additional restrictions that the company has placed on agency paper. Fannie Mae will allow a loan with a FICO score of down to 620. And overlay would be if we said, look, we need at least a 640 FICO. Or if Freddie Mac allowed transactions with income that could be documented by just a verification of employment, we chose to say, we

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need at least a W-2 and a pay stub.

Additional requirements over what the standard agency would require. And when I say agency I mean Fannie Mae and Freddie Mac.

Q Who in the company is charged with creating and updating the product summaries?

A Its that same credit policy group. But they're in communication with the capital markets group too much the products are.

A The parameters that we're able to sell to an investor or to an agency.

Q And the under writers aren't involved in that is correct is that correct.

A They are not involved in that.

Q Okay.

And we may have gone over this before, but now that I've got a good list I just wants to go through them.

Where are the product summaries available for the underwriters to look at?

A Today?

Q Between 2007 and 2010.

A At one point there was a hard copy. I will have to double check -- there was a time frame when we just had hard copies. It has been moved to the

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intranet or the share site. So today, I mean, all the product summaries are available on line?

Q Okay.

That seems logical to me, its hard to imagine people using big binders nowadays like they used to.

And if you can't remember between 2007 and 2010 with regard to that, its okay, just to say either in paper or on the intranet, that would be fine with me.

A Yeah.

Q Just so you know.

And then let's talk about the client guide.

Who in the company is charged with creating and modifying the client guide?

A Credit policy.

Q And again, the underwriters don't do that.

A No.

Q Okay.

And we talked about this will already, but I just wanted to confirm, between 2007 and 2010 underwriters could access the client guide either in paper or on the intranet depending on the time period?

A That is correct.

Q All right.

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And then with regard to underwriting policies and procedures, who within the company is charged with creating and modifying those?

A For the correspondent channel I would be at that point in time. The other leaders from within those other two channels would be responsible for the policies and procedures from an underwriting standpoint.

Q And by you, you're referring to yourself as --

A Level 6.

Q Arrests the level 6 credit channel officer.

A Yes.

Q And how about credit, or overlays, who within company is charged with creating and modifying those?

A Credit policy is charged with updating the overlays. The amount of over lays are what well look to place -- overlays would go to the mortgage credit operations review committee. Credit policy recommends overlays, the overlays would be approved by that mortgage credit operations review committee. There is a name for it?

Q Something close to that.

A Yeah.

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Q And again, the underwriters aren't involved in creating or modifying the over lays; is that right?

A They are not.

Q Let's go in to a little bit more about the computer systems and programs that the underwriters use.

You mentioned A U S systems. And that, that's refers to automated underwriting; is that correct?

A Automated underwriting system.

Q Okay.

And just generally what is an automated underwriting system used for?

A Its to provide a recommendation of documentation requirements and the over all recommendation that the loan may be eligible for sale to either Fannie Mae or to Freddie Mac.

Q And it's my understanding that Fannie Mae and Freddie Mac both have their own systems, correct?

A Correct, Fannie Mae has desktop underwriter and Freddie Mac has loan prospector specter.

Q And so in the instance of a Fannie Mae loan, an underwriter would always be using did you.

A I would not say always be using did you. Fannie Mae recommends that you use their desktop

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underwriter this, don't require it.

Q But its generally used for Fannie Mae loans.

A Its generally used for Fannie Mae loans, we may also sell Freddie Mac a loan with a desktop underwriter feedback report in it.

Q Okay.

Other than desktop okay top under write and loan prospector specter, what other types of underwriting systems do the underwriters use?

A For our jumbo product line we had an underwriting system called engagement genius, E NG E N IOU S. It was custom desktop underwriter. We used the desktop underwriter engine and placed jumbo guidelines on top of it.

Q And what's a jumbo loan again?

A Excuse me, it was non conforming.

Q Oh, it was non conforming.

A It was non conforming. Jumbo and non conforming we use at the same time. Its interchangeable term for us.

Q Any other automated underwriting systems?

A And for FHA product they have a system that is referred to as total score card.

Q And explain to me exactly how the underwriter uses an automated underwriting system

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within the underwriting process?

A The loan data would be submitted to one of these automated underwriting systems. And a report is generated from that system that will outline the recommendations to document that loan. How to document income, how assets should be documented. What kind of appraisal will be necessary. And will provide a purchase recommendation from the agency, whether or not its Fannie Mae or whether or not its Freddie Mac. So the underwriters use the recommendation feedback messages in regards to documentation as to how to, how -- how the minimum documentation standards will be met?

Q Okay.

And give me an example of some of those recommendations, what they could be?

A For documenting income, it may come back and say, well, you need at least two years tax returns. Or you need at least two years W-2s, or one month pay stub. Some transactions may just come back with one year worth of tax returns. Or some, some files may have just came back with, you need a pay stub to documents income. Same for assets. You need two months bank statements or maybe you just need one months bank statement. So it sets the standards for

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The correspondent channel also out sourced a number of loans. That's why the numbers are lower.

Q When you said production underwriters, what do you mean by that?

A The over all underwriting department has more people than 30, but we have team managers, we have a project, a project person that helps with systems and with updates. We have an admin. We have people who deal with the phone. So there is a total number of F T Es, but then there is a total number that, who will work on loans?

Q Okay.

A That's what we mean by production underwriters, they're the ones reviewing the loans.

Q Okay, got you.

Let's talk a little bit about the training that was provided to underwriters between this 2007/2010 time period.

What sorts of training was given to underwriters at the start of their employment on how to perform their job duties?

A There was an over all training conducted to bring them on board. So the HR area would also have a training that would talk about work days, they would talk about the office, it would talk about benefits

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A Yes, the goals look very similar to what. Underwriters goals to be.

Q Well, I want to ask you a couple of questions about the first few goals here.

Goal number 1 was manage loan quality, achieve annual QC rating of point 99 or better.

And you're talking a little bit about QC rating before but explaining to me exactly what that is.

A The QC rating yeah, say for sure exactly what their annual QC rating included, but in general a quality control rating is if our quality control department reviewed ten files, that that underwriter reviewed, how many of those files had an error in it?

Q Okay.

A And that's what the finding, generally we would measure by finding rate.

Q And what would be considered an error?

A A situation where the file wasn't documented according to the agency guidelines, where that error could cause that loan to be repurchased where we would have to repurchase that loan from the agency?

Q And what are the consequences for the underwriter for having a low QC score?

A Action plans, and leading up to a

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termination if, if they continue to make those type of errors that would require us to continually repurchase loans that they under wrote.

Q So -- and how often are the QC audits done on the underwriters?

A The post fopped quality at the control you said its are done monthly. On the previous months production. So we'd get the reported 60 days probably after that, after that month end. For example, loans that were purchased in the month of October would be reviewed by the quality control department in November, and would be reported back to me by the end of December. So we're generally dealing with information that is probably 60 days old.

So that is one, that is one component of QC.

Q Okay.

And when you're talking -- well, what are the other components of QC?

A Well, for the QC rating we recently, well, not recently, in end of 2008 we started our own, what we're calling self testing program. Where I have a separate team of individuals that all they do is review work done by our teams in the previous day. So we're able to get a good sample of loans of every underwriter where as that post fund quality at the

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control group that does their own monthly, well, that's done on a sample of the channel. Highly unlikely that we're going to get loans reviewed by I ever within of our underwriters. So we want to be able to provide constant feedback to the team, the self test team allows to us do that. So between the quality control findings and the self test findings we have a good sample for every underwriter to go back with feedback on.

Q And are there underwriters that work in the QC department?

A Well, we would -- for our self test team, they were at once underwriters. I would expect that our quality control unit employees people who were previous underwriters.

Q Okay.

But they're not production underwriters.

A They are not no, gland the ones on your test team also aren't production underwriters.

A That is correct, they are not.

Q Yeah, that was my point.

I just found it if you know any that you would saying of course you would expect they would have some experience in it. It was funny to me.

A Some QC units do not employ that type of

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have an early payment default audit or a repurchase audit if their went in to that.

Q Okay, thanks.

I want to talk about the second business goal now on Exhibit 26. And that is maintain average daily underwriting productivity standards of an average of nine loans o per day.

Is it true between 2007 and 2010 underwriters were required to review a certain number of loans per day?

A There is always a productivity benchmark. The benchmark here I can't comment on.

Q Okay.

So the benchmark may vary but that was always one in place.

A There was one in place.

Q Okay.

And this is a situation where you're expected to review a certain number of files per day and if you don't you don't meet that goal; is that correct?

MR. GOLDER: Objection.

THE WITNESS: Part of the, part of this business goal was -- and just to read here further, they had all different numbers in the comments

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section, they had to increase their goal, but certainly from a, from a review perspective the number of loans that were done per day would be one of the measurements used.

BY MR. SCHUG:

Q And why is it important for the company that there is an expectation of how many loans the under writes review per day?

A Well, from an over all business plan perspective, we're expected to underwrite based upon the over all business plan, X A. units per months. If I've hired X amount of F T Es I need to be able toking make sure we're getting through a certain number of loans to maintain an over all service level. So the number of F T Es is planned out, I mean, certainly we're not going to increase the productivity just to meet volume. But the expectation needs to be set with an over all business plan for a certain number of units and underwriters that you need to accomplish that plan. Volume changes and we may need to add more people, but there needs to be an expectation of how many of the loans can get done by each person.

Q Okay.

So is it is, it tied to how much, and I suppose they're indirect.

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I'll rephrase it.

Is the productivity number tied to the businesses goal of how much revenue they would like to bring in?

A No, the over all business goal for whatever, for 20089 may have been we need to underwrite a thousand loans per months. Well, Ed, how many underwriters do you need to underwrite a thousand loans per month. And there needs to be an expectation, well, each underwriter should be able to get through five loans per day. So I need 20 underwriters to get a thousand loans done per month.

Q Okay.

A That's what the, that's what the productivity measure was for. You always need a basis, this is how many loans we think an average underwriter will get done. Not everybody gets done the same amount.

Q Okay.

In the example you just gave, the thousand loans per month, total, where -- how does. Company come one that number?

A Through the over all business plan. So each of those channels will have loan agents, will have sales managers, will have sales directors. And they

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need to forecast out their plan as to how many units they feel that they'll be getting from their coverage air Y.

As we expand the over all operation more you would have the expectation that there is more volume. So from an over all business perspective that number is set. And then its moved down to the operations areas. Here's the number. Now, you need to plan your staff around that number.

Q Okay.

And then business goal number 3 its talking about customer service and you referred to that before. Tell me about what the customer service score involves?

A I can't say much about this plan about the team service score of 90 percent, I'm not aware as to how they would calculate their team service score.

But as far as customer service goes, there is feedback we're getting from a sales director of ours, or from a client, or from an internal customer on, on those time of interactions that they said with the under writer. As we mentioned before, there is a number of phone calls and questions that come in to the underwriter from an external standpoint, from a client. Asking how you would look at a certain

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validate that they have taken their classes and that
they passed their classes.

Q Okay. You can set that one aside.

Q I want to talk to you now about how the
underwriters were compensated between 2007 and 2010.

Well, just for the sake of clarity, are you
aware of any differences as far as the training that
we discussed earlier, or the performance evaluations
that we just discussed, are you aware of any changes
in those areas between 2006 and 2007?

A The over all review forms, again, this is
notice a form that I've seen before, but its what we
have in the other channels would be similar to this.
Those have changed over the years. But the goals are
very much the same in those cases.

Q Okay. Thanks.

So in the time period that we're discussing,
the underwriters received a salary is my
understanding; is that right?

A That is correct.

Q And they also received a production
commission or bonus; is that correct?

A It wasn't a commission, it was a quarterly
incentive. That may differ based upon channel.

Q Okay.

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And how would it differ between channel to channel? Well, first of all, other than the bonus, or the incentive, and the salary, was there any other components to the underwriters pay?

A In -- are we talking about 2007 to 2010. The quarterly incentive was the primary incentive package outside of salary.

Depending upon volume, there were some heavy volume swings in those years, and certain, at certain times on certain weekends we had, we had extra work weekends where there were times where we would just pay by the loan as well. That if you did ten loans or five loans utility get X amount of dollars per loan.

That wasn't a standard, a standard program across all channels. But all channels may have used something similar to that. In really heavy volume environment.

Q Okay.

So can you just give me an example of how that incentive program would work for an underwriter?

A The production part of the plan, there was a base, a base production line. And we, over time, had a point equivalent per day. Where maybe one conventional conforming loan, a new one was worth 1 point. But an FHA loan was worth 1 point 25. That's

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how it started. And then you had to get up to a certain base points per date and you would average that over a months. You had to maintain a minimum of at least what the average was. And then the amount that you were over that, that's where you started to have the opportunity for that, for that, for that incentive.

Now, over time it just didn't include new loan submissions, we include resubmissions because a lost work was happening on resubmissions. So we introduced, welling, we know that more of your day is going towards resubmissions, so we're adding points for your resubmissions as well.

Q Okay.

Let me, I want to show you something just to see if this is what you're talking about snatched.

(ALLY 30(B)(6) Deposition Exhibit 27 was marked for identification and attached to the transcript.)

BY MR. SCHUG:

Q I'm showing you what's been marked as Exhibit 27. And this is a document thatth K A Bates label is 785.

This looks like its from it, says entered March 28th, 2006. But is the productivity

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resubmissions that were done. And the final out come of those, of those loan transactions.

Q And what is --

MR. GOLDER: Sorry to interjected, has this documents been produced?

MR. SCHUG: Yeah. It should have been. Jay know you track that NKA I know that traction, that's on stuff we produced to you, I don't know if that's how you produced this documents.

MR. SCHUG: Yeah, this should have been produced with Brian but in this case. If it's not -- I'll double check.

MR. GOLDER: Okay.

BY MR. SCHUG:

Q All right.

And what are the productivity reports used for?

A Well, the productivity reports would be used to determine the average points per day as I was talking about before. So that's the source document that we use to determine the number of loans or the number of resubmissions that each underwriter did during a certain time frame. Whether or not its one day or its one week otherwise one month or its one quarter. That production report is used to track

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production for that underwriter.

Q Okay.

And are there, are you aware, are there production reports within the retail channel as well?

A There are. The reports will differ based upon channel and based upon the information that the system can obtain. Not all systems are. Same.

Q Okay.

You can put that one aside.

Q As far as the quality of the underwriters work goes, what happens if the underwriter does their job correctly, the loan is funded, and then the borrower defaults?

MR. GOLDER: Objection.

BY MR. SCHUG:

Q Do you understand my question?

A I do not.

Q Okay.

If a borrower defaults on their loan for whatever reason, are there any consequences for the underwriter that under wrote that loan?

A It goes back to that early payment default audit that I had talked about earlier. If the borrower defaults within an early payment default time frame, and that will, that time frame is different

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based upon the loan product, whether or not its conforming, non conforming, FHA or VA. But the most conservative time frame would be if the borrower goes delinquent 90 days within first 12 month of the loan. Those loans are pulled for review by our QC area. And are reviewed. And if there was an under writing error, if the underwriter did something incorrectly, that would be one of those QC findings that we were talking about.

Q Okay.

And if there was a default and the underwriter, it was found that they did everything correctly, then what happens?

A Nothing happens from the underwriting perspective.

Q Okay.

What happens from the businesses general February speculative?

A Well, every thousand that we have, I mean, there is some expectation of default. So that comes in to play with the pricing of that product. So regardless of how we underwrite the loan, the loans can still go down based on the other all expectation of the product. If the default rate is higher than they would expect, that causes lost revenue. If the

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loans don't perform like expectation, to expectation.

Q Okay.

One more document I want to show you here.(off.ecl) snvment.

(ALLY 30(B)(6) Deposition Exhibit 29 was marked for identification and attached to the transcript.)

BY MR. SCHUG:

Q I'm showing you what's been marketed as Exhibit 29.

This is a document Bates labeled D B 6201 through 6207. Just generally do you recognize this document?

MR. GOLDER: Wait, what's it -- I don't know if I have the same thing what the did you say it was.

MR. SCHUG: 6201 to of 207. Oh, you have the other one.

MR. GOLDER: Yeah.

MR. SCHUG: You should have the 2009 one is what I'm hoping.

MR. GOLDER: No, I have 2010, so does the witness?

MR. SCHUG: You have 2010?

THE WITNESS: Um-hum.

MR. SCHUG: All right. Let's take a break